

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

T & W FORGE, INC.
562 West Ely Street
Alliance, Ohio 44601

Plaintiff,

-VS.-

V & L Tool Inc.
Statutory Agent: Gerald A. Schaefer
2021 MacArthur Road
Waukesha, Wisconsin 53188

Defendant.

Case No. **2005 CV 01648**

Judge:

Sinclair

FILED
MAY 20 2005

PHIL G. GIAVASSI
STARK COUNTY, OHIO
CLERK OF COURTS

COMPLAINT

(JURY DEMAND ENDORSED HEREON)

Now comes the Plaintiff, T & W Forge, Inc., by and through its undersigned counsel, and hereby submits the following Complaint against the Defendant:

JURISDICTION, VENUE, AND PARTIES

1. Plaintiff T & W Forge, Inc. is an Ohio Corporation with its principal place of business located at 562 West Ely Street, Alliance, Ohio 44601.
2. Upon information and belief, Defendant V & L Tool, Inc. is a Wisconsin corporation with its principal place of business located at 2021 MacArthur Road, Waukesha, Wisconsin 53188.
3. Upon information and belief, Defendant faxed purchase orders to Plaintiff and corresponded via telephone and facsimile transmission. As a result, Defendant has transacted business in Ohio and therefore the State of Ohio has personal jurisdiction pursuant to R.C. 2307.382 and Civil Rule 4.3. See *US Sprint Communications Company Limited Partnership v.*

Mr. K's Foods, Inc. 91994), 68 Ohio St. 3d 181; and *Ricker v. Fraza/Forklifts of Detroit* (April 26, 2005), unreported, 2005 WL 948997 (Ohio App. 10th Dist.).

4. Defendant frequently telephoned Defendant at the Alliance, Ohio factory to place orders, follow up calls were frequently made, written and oral acknowledgments were exchanged, and invoices and bills of lading were provided from the Ohio. (See Bill of Lading attached hereto as Exhibit A). The parties had frequent and sufficient contacts to confer jurisdiction upon this court.

5. The products at issue in the within matter were manufactured at Plaintiff's factory located in Alliance, Ohio. (See Order Acknowledgment dated 2/19/03, attached as Exhibit B). Plaintiffs are in the process of locating the Order Acknowledgment for the products at issue in the transaction described in Plaintiff's Complaint, which will be supplemented. (See Bill of Lading, attached hereto as Exhibit A, showing that the product was shipped from the Alliance, Ohio, factory).

6. Defendant had a continuous business relationship with Plaintiff in Plaintiff's Ohio office and that telephone and facsimile communication was frequently addressed to Plaintiff's Ohio facility. As a result, there have been enough minimum contacts under the due process clause to establish that Defendant purposely availed itself of the privilege of acting in the forum state, the cause of action arose from Defendant's activities in the forum state, and the acts of Defendant had a substantial enough connection with the forum state to make exercise of

~~jurisdiction over the Defendant reasonable. See *UD Sprint* and *Ricker*, supra.~~

7. The Ohio Courts of Common Pleas have jurisdiction over the parties and the causes of action being asserted because the damages pled on the face of the Complaint are less than \$75,000.00.

8. Venue is proper before this Court pursuant to Ohio Rule of Procedure 3.

STATEMENT OF FACTS

9. Plaintiff T&W Forge, Inc. does business with Defendant V & L Tool, Inc. under various written terms and conditions.

10. Plaintiff T&W Forge, Inc. is a manufacturer and supplier of specialty parts which are used by Defendant V & L Tool, Inc. in its business. (See Purchase Order, attached hereto and incorporated herein as Plaintiff's Exhibit "C").

11. On January 16, 2004, Plaintiff billed Defendant a sum of Thirty Two Thousand Four Hundred Ninety One Dollars and Fifty Two Cents (\$32,491.52) for parts provided to Defendant. (See Invoice No. INV11060 dated January 16, 2004, attached hereto as Plaintiff's Exhibit "D"). Despite numerous attempts to collect said sum, Defendant has not paid any of the balance due and owing for said parts.

COUNT I - BREACH OF CONTRACT

12. Plaintiff realleges and incorporates as if fully written herein paragraphs 1 through 11 as fully rewritten herein.

13. Plaintiff T&W Forge, Inc. fulfilled all its obligations and duties under the purchase orders with Defendant V & L Tool, Inc.

14. Furthermore, Plaintiff reasonably relied upon Defendant V & L Tool, Inc.'s purchase orders to pay for said specialty parts.

15. Plaintiff has repeatedly demanded that the Defendant V & L Tool, Inc. pay the balance due of Thirty Two Thousand Four Hundred Ninety One Dollars and Fifty Two Cents (\$32,491.52) pursuant to contract terms in the purchase orders.

16. Furthermore, Defendant V & L Tool, Inc. is liable for its anticipated breach of

the contract and Plaintiff's future loss of profits, without reasonable notice and without good cause.

17. Plaintiffs have been damaged by the Defendant's intentional acts and failure to give reasonable notice and should be liable for costs and attorney fees.

18. Defendant's actions are direct misrepresentations and caused the breach of contract of the purchase order's terms resulting in damages of Thirty Two Thousand Four Hundred Ninety One Dollars and Fifty Two Cents (\$32,491.52) for parts that were manufactured, but not paid for, and future profits for anticipated repudiation of the contract, without reasonable notice or good cause, of reasonable attorney fees, costs, interest, and any other remedy this court deems just inequitable.

COUNT II - MISREPRESENTATION AND FRAUD

19. Plaintiff realleges and incorporates Paragraphs 1 through 18 as if fully rewritten herein.

20. Plaintiff shipped parts to Defendant between December 5, 2003 through February 6, 2004, for which there is a balance due and owing to Plaintiff due and owing in the amount of Thirty Two Thousand Four Hundred Ninety One Dollars and Fifty Two Cents (\$32,491.52). (See Exhibit E, Invoice No. INV11060).

21. Plaintiff reasonably relied upon the terms and conditions of the purchase order in shipping the parts to Defendant V & L Tooling, Inc.

22. Plaintiff proceeded in good faith and subsequently manufactured parts pursuant to Defendant's purchase orders.

23. Upon information in belief, the Defendant made false statements that it would abide by the terms and conditions of payment, but the Defendant did not intend to fulfill its

representation.

24. Plaintiff reasonably relied upon the oral and written communications, and subsequent purchase orders to produce the products and ship them to Defendant.

25. Because of Defendant's intentional act of misrepresentation and/or omission, Plaintiff has been proximately damaged in the amount of \$32,491.52, plus interest, costs, and punitive damages to be determined by a jury, plus reasonable attorney fees and any other remedy this Court deems just inequitable.

COUNT III - UNJUST ENRICHMENT

26. Plaintiff realleges and incorporates Paragraphs 1 through 25 as if fully rewritten herein.

27. The Defendant V & L Tooling, Inc. has accepted the parts that were manufactured by the Plaintiff.

28. The Defendants has failed to pay for the product at the established price.

29. Therefore, Defendant V & L is liable under the theory of unjust enrichment to compensate the Plaintiff for the material and services provided in the amount of at least \$32,491.52, plus the statutory legal rate of interest from January 16, 2004, at 10% per year, plus reasonable costs.

COUNT IV - QUANTUM MERUIT

30. Plaintiff realleges and incorporates Paragraphs 1 through 29 as if fully rewritten herein.

31. The Defendant V & L Tooling, Inc. has been provided with parts by Plaintiff T&W Forge, Inc.

32. The Defendant V & L Tooling, Inc. has failed to fully pay for the parts provided,

which have been repeatedly billed in the amount of \$32,491.52.

33. Thus, Defendant V & L Tooling, Inc. is liable in the theory of quantum meruit to compensate the Plaintiff for the service and material provided in the amount of \$32,491.52, the amount of the unpaid balance, plus the legal rate of interest from January 16, 2004, at 10% per year, plus reasonable costs and attorney fees.

COUNT V - ON ACCOUNT

34. Plaintiff realleges and incorporates Paragraphs 1 through 33 as if fully rewritten herein.

35. Defendant V & L Tooling, Inc. owes Plaintiff's account in the amount of \$32,491.52.

36. Defendant V & L Tooling, Inc. has failed to properly pay the account, which is due and owing, and proper demand has been made.

37. Defendant V & L Tooling, Inc. owes Plaintiff on its account the sum of \$32,491.52, plus the legal rate of interest from January 16, 2004, at 10% per year, and reasonable costs and attorney fees herein.

COUNT VI - CONVERSION

38. Plaintiff realleges and incorporates Paragraphs 1 through 37 as if fully rewritten herein.

39. Defendant V & L Tooling, Inc. has received and is using parts manufactured and provided by the Plaintiff T&W Forge, Inc.

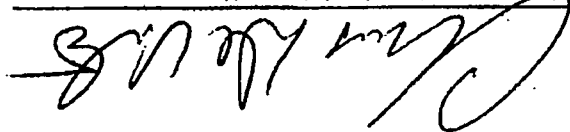
40. Defendant V & L Tooling, Inc. has wrongfully converted Plaintiffs parts to its own use and has failed to pay the full amount for the parts which it is using.

41. As a direct and proximate result of Defendant's known and unknown actions, the

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Attorney for Plaintiff, T&W Forge, Co.

Christopher M. DeVito (0047118)
Kylie L. Grumbine (0077111)
Morganstern, MacAdams & DeVito Co., L.P.A.

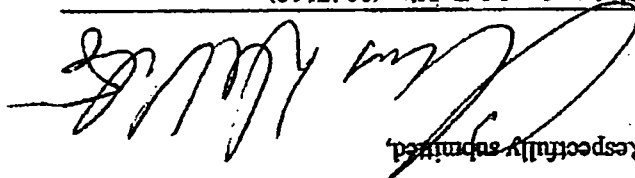


A trial by jury with the maximum number of jurors permitted under Ohio law is hereby requested.

JURY DEMAND

Attorney for Plaintiff, T&W Forge, Co.

Christopher M. DeVito (0047118)
Kylie L. Grumbine (0077111)
Morganstern, MacAdams & DeVito Co., L.P.A.
623 West Saint Clair Avenue
Cleveland, Ohio 44113-1204
(216) 687-1212 or 621-4244
(216) 621-2951 - Facsimile



Respectfully submitted,

court deems just and equitable.

Plaintiff has been damaged in the form of conversion and is entitled to compensatory damages for the parts that were converted in the sum of at least \$32,491.52 and exemplary damages in an amount to be determined by a jury, plus reasonable attorney fees, interest, costs, and expenses. WHEREFORE, Plaintiff demands judgment against the Defendant V & L Tooling, Inc. on Counts I through VI in the amount of \$32,491.52 from January 16, 2004, plus the legal rate of interest of 10% per year plus reasonable costs and attorney fees; and any other remedy this court deems just and equitable.

PLAINTIFF'S
EXHIBIT
A

DCX



T&W FORGE, INC.
562 WEST ELY STREET
ALLIANCE, OH 44801
PHONE: 330.821.5740
FAX: 330.821.7309
www.twforge.com

blvett@twforge.com
edehvich@twforge.com
cannus@twforge.com

330-821-6726 Sales Fax

ORDER ACKNOWLEDGEMENT

TO: V & L Tool

DATE: February 19, 2003

Attn: Dick Kumbler

Thank you for your order!!

ORDER NUMBER: 61431

DATE OF ORDER: 2/11/2003

PART NUMBER: LW-13298-RGH

T & W JOB NO.: 9814

QUANTITY: 2000

PRICE EACH: \$16.37

CUSTOMER REQ.

DELIVERY DATES: 3/5/03 (500), 4/23/03 (500), 6/25/03 (500), 8/6/03 (500)

PROMISE DATES: 4/18/03 (tentative)

REMARKS: Waiting on steel

This acknowledgement indicates we have received, entered and are processing your order in accordance with our general Terms and Conditions which are printed on the reverse side hereof. Thank you for your business which is receiving our careful and prompt attention.

T & W FORGE CO., INC.

Certifications:

**ISO 9002
DI 9000**

Signed: 

Sales Department



BB/ad
TWOA-02 11/01

TERMS AND CONDITIONS

1. ACKNOWLEDGMENT: This is the acknowledgment of a written purchase order on the "I care and Conditions" basis contained. Any agreement resulting from this acknowledgment shall be deemed to have been entered into between the parties; no other oral, written, or communications with respect to this order, which conflict or are inconsistent with the provisions herein contained, both printed and otherwise, shall be binding by either.

2. These general benefits are based on current levels of material and labor, and if any changes come in such costs or any time before delivery, prices may be adjusted by an appropriate amount to such changes in cost.

1. I have read and understand the above information and agree to the conditions of use of the service. I understand that my use of the service is subject to the terms and conditions of use of the service, which are available at the following link: [https://www.fox.com/terms-and-conditions](#). I understand that my use of the service is subject to the terms and conditions of use of the service, which are available at the following link: [https://www.fox.com/terms-and-conditions](#).

1. PAYMENT. Payment is to be made in United States funds, unless otherwise specified.

1. DRAWINGS: Forging design will be submitted by the supplier for approval by the purchaser prior to actual production.

[illegible][illegible]

1. **DELAYS.** Delivery dates are approximate and are predicated on conditions existing at time of this quotation. Delay of a shipment with respect to delivery is subject to delays caused by any act of God, flood, war, fire, riot, strike, conditions, labor trouble, etc. of any kind. The carrier is not responsible for any delay in delivery.

10. CANCELLATION. Orders will not be subject to cancellation or modification, subject to the photo or the part, without the seller's written consent, and then only under the following conditions: the seller for all applicable codes imposed by him, including the cost of nonreturnable materials, tools and other parts, and the cost of shipping and handling. The seller will not be subject to cancellation or modification, subject to the photo or the part, without the seller's written consent, and then only under the following conditions: the seller for all applicable codes imposed by him, including the cost of nonreturnable materials, tools and other parts, and the cost of shipping and handling.

11. **PAYMENT INFORMATION.** No liability will be assumed by the seller for the transportation of any goods shipped because of the nature, character or use of any goods or materials ordered by the purchaser, and the purchaser shall indemnify and hold the seller harmless from all claims for loss or damage, and from all costs, attorney's fees and expenses paid or incurred by or imposed upon the seller in connection with the defense of any action brought against the seller for the nature, character or use of any goods or materials ordered by the purchaser.

[illegible][illegible][illegible]

THE FOLLOWING INFORMATION IS FOR YOUR INFORMATION ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE NATIONAL ARCHIVES.

1945 as amended, as well as the requirements of the Transportation Act when applicable as required. But consider the filing of cost breakdowns under these regulations. In 1945 as amended, as well as the requirements of the Transportation Act when applicable as required. But consider the filing of cost breakdowns under these regulations.

1. **DISCRIMINATION OF CLASSES.** Any contract, license or fee is considered void under the laws of the State of Ohio. Any controversy or claim arising out of, or relating to any contract, license or fee, which is not settled by mutual agreement between the licensor and the licensee, shall be submitted to arbitration and decided in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

11. STORAGE, PACKING, SPECIAL SERVICES. Palletizing, strapping, packing, crating, blocking, and similar processes and services are not chargeable. Packing, crating, blocking, and similar processes and services are not chargeable. Packing, crating, blocking, and similar processes and services are not chargeable.

(c) If no release has been given by the writer at the end of thirty days from receipt of such request, writer reserves the right to make changes and make changes to the present version of the work at any time without notice to the writer.

(11) If no action has been taken by the purchaser in the expiration of thirty days from receipt of such invoice, the seller shall be entitled to resell the goods at the best price obtainable and to claim reimbursement of the expenses incurred in the resale.

17. WAIVERS, ALTERATIONS, AND MODIFICATIONS. No waiver, alteration or modification of the terms and conditions herein shall be binding on either party unless written and signed by the authorized representative.

T&W, Al Concoy

Date: 10/23/2003 Time: 4:18:42 PM

Page 1 of 1

Phone (262) 547-1226

1/25/00

Fax (262) 521-1031

PURCHASE ORDER

| | | | | |
|---|-------------------------------|-----------|------------|--------------|
| to: | T & W Forge, Inc | | | 330-521-7309 |
| from: | V & L Tool, Inc. | | | |
| Qty. | Description | Order No. | Price | Delivery |
| 2,000 | 9816 LW-13305-RGH | 63654 | \$25.47/ea | 1000-12/5/03 |
| | Connecting Rod Forging | | | 1000-2/6/04 |
| 1,200 | 9815 LW-13758-RGH | 63655 | \$27.18/ea | 600-12/12/03 |
| | Connecting Rod Forging | | | 600-2/20/04 |
| 250 | 9820 LW-15288-RGH | 63656 | \$24.18/ea | 1/16/04 |
| | Connecting Rod Forging | | | |
| 300 | 9814 LW-18298-RGH | 63657 | \$24.68/ea | 2/6/04 |
| | Connecting Rod Forging | | | |
| | Aircraft Quality | | | |
| | Material Certs. Required | | | |
| For the benefit of successful machining at V&L Tool, please work with your steel supplier to do whatever is possible to hold the chemical composition of the following 3 elements as close as possible to the levels shown. | | | | |
| | Sulfur .015-.025 Minimum | | | |
| | Nickel .045-.055 Maximum | | | |
| | Aluminum .025 Maximum | | | |
| | Al Concoy | | | |
| | Please acknowledge | | | |
| | price and delivery. - Thanks. | | | |
| Overshipment of 5% is the absolute acceptable limit. | | | | |
| Any excess above 5% will be returned at your expense. | | | | |
| All paper work associated with any shipment involving the above order(s) must show the appropriate purchase order number(s) to ensure timely processing of receipts. | | | | |
| Fed. Employer No.: 35-1151827 * Wis. Employer No.: 178444 * Wis. Sales & Use Tax No.: 178416 | | | | |
| Procurement Manager, <i>Dick Kumbler</i> email: dick.kumbler@vtool.com | | | | |
| Voice: (262)547-1226 Fax: (262)521-1031 Web Site: www.vtool.com | | | | |
| 2021 Mac Arthur Road (Deliveries Door One) Waukesha, WI 53188 | | | | |

T&Wfppq





Invoice

No. INV11060

| |
|---------|
| Date |
| 1/16/04 |

Ship To:

T & W FORGE CO., INC.
 Department 3085
 135 South LaSalle
 Chicago, IL 60674-3085

(330) 829-5007 Phone
 (330) 829-1090 Fax

Bill To:

V & L Tool, Inc.
 Accounts Payable Dept.
 2021 MacArthur Rd.
 Waukesha WI 53188

Ship To:

V & L Tool, Inc.
 2021 MACARTHUR ROAD
 WAUKESHA WI 53188

| P.O. No. | Customer I.D. | Sales I.D. | Shipping Method | Terms | Req'd Ship | Master # |
|----------|---------------------------------|-------------|-----------------|--------|------------|-------------|
| 63655 | VLT401 | | CCX | Net 30 | 10/24/03 | 6,203 |
| QTY | ITEM NUMBER | DESCRIPTION | UOM | DISC. | U. PRICE | EXT PRICE |
| 546 | F-09815-VLT401 FLW-13756-RGH | | Each | \$0.00 | \$27.19 | \$14,845.74 |
| 847 | F-09815-VLT401 FLW-13756-RGH | | Each | \$0.00 | \$27.19 | \$17,591.93 |
| 3 | PALLET 32 X 32 Pallet | | Each | \$0.00 | \$17.95 | \$53.85 |

| | |
|--------------|--------------------|
| Subtotal | \$32,491.52 |
| Misc | \$0.00 |
| Tax | \$0.00 |
| Freight | \$0.00 |
| Trade Disc | \$0.00 |
| Total | \$32,491.52 |

Thank Yo:

